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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,559	10/27/2003	James D. Perrick	7658	3618

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EXAMINER
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PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/693,559

Applicant(s)

PERRICK, JAMES D.

Examiner

David J. Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 6-30-05 and this action is final.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to how the port is dependent upon the length of the slot. Further, it is unclear to what the leg of the stop means is fit into.

Claims 2-4 and 8 depend upon rejected claim 1 and include all of the limitations of claim 1 thereby rendering these dependent claims indefinite.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 2,167,163 to Toepper in view of U.S. Patent No. 3,230,658 to Wuotila.

Referring to claim 1, Toepper discloses a wingcase wobbler fishing lure comprising a wingcase wobbler that is formed from a section of flat material – at 1, that has a round bow end – see proximate 7 in figures 1-2, with spaced sides tapering outwardly therefrom that end in a stern end – proximate 4 in figures 1-2, and includes a port – at 9 and proximate 9 as seen in figures 1-3, formed along the wingcase wobbler longitudinal axis – see for example figures 1-3, and that is approximately one hundred to one hundred seventy-five percent greater than the distance to a wingcase wobbler bow end – see for example figures 1-3, dependent upon a length of a slot – at 12-15, formed longitudinally into the wingcase wobbler stern end – see for example figures 1-5, that is for coupling to a bait – at 11-19, along the wingcase wobbler longitudinal axis – see for example figures 1-3 and 11, and a bait – at 11-19, that includes a barbed hook – at 2, on a rear end and an eyelet – see proximate 9 in figures 1-3, in its forward end that is for fitting through the port – at 9 and proximate 9, and is for attachment to an end of a fishing line – at 8 (this limitation is a functional limitation in an apparatus claim and it is deemed that a fishing line is capable of being attached to the eyelet and further the eyelet is indirectly attached to the fishing

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line – at 8 via items 1 and 7 as seen in figure 3), and the bait includes a stop means – at 4,16, to receive and hold the wingcase wobbler – see for example figures 1-3, and which the stop means is formed as a right angle section having a stop base end – proximate 4, that is secured to the bait body – see figures 1-4, and a leg – at 4 and/or 16, that extends oppositely to the hook – see for example figures 1-5, at approximately a right angle towards the bait eyelet end is to fit into and slid along the slot – at 12-15, formed into the wingcase wobbler – see for example figures 1-5. Toepper does not disclose the material of the lure is flexible. Wuotila does disclose the material of the lure – at 10, is flexible – see for example figures 1-7 and column 2 lines 65-71. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Toepper and add the material of the lure being flexible of Wuotila, so as to allow for the lure to be formed as integral part that can be placed into differing orientations.

Referring to claim 2, Toepper as modified by Wuotila further discloses the wingcase wobbler is formed from a section of flexible plastic material – see for example column 2 lines 65-71 of Wuotila, and the distance of the port – at 9 proximate 9 of Toepper or – at 54, from an end of the slot – at 12-15 of Toepper and – at 36,62 of Wuotila, formed into the wingcase wobbler stern end is at least one hundred percent greater than the distance of the wingcase wobbler bow end – see for example figures 1-5 of Toepper and figures 1-3 of Wuotila.

Referring to claim 3, Toepper as modified by Wuotila further discloses the stop base – at 6,14 of Toepper, is formed as a right angle section where the stop base end is secured to the bait body – see at 2-3 in figures 1-3 of Toepper, extending therefrom oppositely to the hook – see for example figures 1-3 of Toepper, and includes the leg – at 4 and/or 16, that extends at approximately a right angle from the stop base toward the bait eyelet – proximate 9 – see figures

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1-5 of Toepper, that is to fit into the slot – at 12-15, formed in the wingcase wobbler stern and extends a short distance along its longitudinal axis with the leg to travel into and over the slot end – see for example – at 4,16 in figures 1-5 of Toepper.

Referring to claim 4, Toepper as modified by Wuotila discloses the wingcase wobbler is colored pages 1-2 of Toepper and columns 2-3 of Wuotila.

Referring to claim 8, Toepper as modified by Wuotila discloses the bait is a hook – at 2,11, having a center body – at 11, an eyelet – see proximate 9 in figures 1-3 and 11 of Toepper, one end and a barbed hook – at 2, on the other end with the stop base – at 4, 16, secured to the body – see for example figures 1-3 and 11 of Toepper, below and pointing oppositely to the hook – see for example figures 1-3 and 11, and the body is wrapped with thread – at 19, to lend an insect appearance thereto – see for example figure 11 of Toepper.

### *Response to Arguments*

4. Applicant's arguments with respect to claims 1-4 and 8 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to wobbling fishing lures in general:

U.S. Pat. No. 1,604,784 to Preleuthner – shows lure body with port and slot

U.S. Pat. No. 1,683,933 to Teshima – shows lure with stop member

U.S. Pat. No. 2,003,366 to Jordan – shows lure with stop member

U.S. Pat. No. 2,561,515 to Keeler – shows lure made of flexible material

U.S. Pat. No. 4,594,806 to Brown – shows lure made of flexible material

GB Pat. No. 2269517 – shows lure with port and slot

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DP

David Parsley  
Patent Examiner  
Art Unit 3643

  
**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

8/10/05